IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 134/2006

Shri Elmano Menino Dias,
aged 41 years, Engineer and
businessman, resident of 314,
Carren Socorro, P.O. Porvorim,
Bardez, Goa 403 501. ..... Appellant.

V/s.

1) The Archbishop,
Archdiocese of Goa and Daman,
Archbishop's House, Altinho,
Panaji, Goa 403 001

2) The Secretary, Secretariat of
Confraternities, Archdiocese of Goa
and Daman, Archbishop's House,
Altinho, Panaji, Goa 403 001

3) The Parish Priest,
Church of Our Lady of Socorro,
Zoswado, Socorro, P.O. Porvorim,
Bardez-Goa 403 501

4) M/s. Fabrica of the Church
of Our Lady of Socorro, Socorro,
P.O. Porvorim, Bardez, Goa
through its Pro-tempore President,
the Parish Priest.

5) Mr. Norbert Fernandes,
functioning as Attorney of Defendant
No.4 Vaddem Socorro,
P.O. Porvorim, Bardez- Goa

6) Mr. Roldao Carneiro, functioning as
Treasurer of respondent No.4
resident of Alto de Porvorim,
Socorro, Panchayat Road,
P.O. Porvorim, Bardez, Goa.

7) The Confraria of Our Lady of Socorro,

Church of Our Lady of Socorro,
Zoswado, Socorro, P.O. Porvorim,
Bardez-Goa through its Governing
Council. ..... Respondents.

Mr. M. S. Sonak, Advocate for the appellant.

Mr. J. E. Coelho, Senior Advocate with Mr. V. Korgaonkar, Advocate for the respondents No.1 to 6.

CORAM : S.K. SHAH, J.

DATE : 28TH FEBRUARY, 2007.

ORAL JUDGMENT:

Heard Counsel on both sides. Rule, returnable forthwith and heard finally with the consent of the Counsel.

2. This appeal challenges the order passed by the Civil Judge, Senior Division, "B" Court, at Mapusa, Goa whereby the learned trial Judge rejected the plaint under Order VII, Rule 11 of the Code of Civil Procedure.

3. The appellant-plaintiff had filed suit seeking declaration that the appointment of the defendant No.4 at the inception (since 9.9.04) was bad in law, illegal and unauthorised as also its continuance; that the defendant No.4 be directed to hand over all the assets, accounts, money, etc., illegally usurped and taken over by them in the year 1974 unto Socorro Confraria and for injunction restraining them from functioning and usurping any domain,

collecting rents or activities originally belonging to the Confraria and taking major policy decisions.

4. Before filing written statement, the defendants No.1 to 3 filed an application under Order VII, Rule 11(d) of C.P.C. praying for rejection of the plaint under the said provision. In the said application, it was essentially contended that in para 52 of the plaint it is shown that the cause of action had arisen on 9.9.1974 and further contended that the said cause of action could not be said to be continuing and recurring and that the period of limitation for filing the suit for declaration and injunction would be three years from the cause of action i.e. from 9.9.1974 and that the present suit filed in 2004 was barred by limitation. They also contended that the Civil Court had no jurisdiction as under the Canon law such a suit is barred and that if any person is aggrieved, he has to approach Higher Ecclesiastical Authorities and, therefore, the suit was not entertainable by the Civil Court.

5. The appellant-plaintiff opposed the said application, essentially on the ground that para 52 of the plaint clearly mentioned that the cause of action had arisen on 9.9.74, which was of continuous and recurring nature and the limitation as per the special law was 30 years and, therefore, the suit was within limitation. He further contended that the suit was of civil nature and, therefore, it was entertainable by the Civil Court under Section 9 of the Civil Procedure Code .

6. The learned Civil Judge, in short, held that the provision of the limitation Act was applicable and, therefore, the period of limitation was three years from the date of cause of action i.e. from 9.9.74 and the suit having been filed in 2004 was totally barred by limitation. As regards the jurisdiction, the trial Court held that the Canon Law is not a special or local law and it is a divine law and therefore, the Civil Court had no jurisdiction. There was also an observation made by the learned trial Judge that the Canon Law did not have force of statute. On these grounds, the learned trial Judge rejected the plaint under Order VII, Rule 11(d) of C.P.C.

7. The learned Counsel for the appellant contended that the suit was of civil nature and, therefore, under the provision of Section 9 of C.P.C. the Civil Court had jurisdiction. He also submitted that the Canon Law prescribes limitation of 30 years for perfecting the title to the Confrarias and, therefore, the suit is filed within the period of prescription of 30 years and, as such, the suit was within limitation.

8. The learned Counsel for the respondents vehemently submitted, particularly on the point of limitation, that the period of 30 years which is prescribed under the Canon Law, was for prescription and was not the limitation. He brought to my notice the provisions of the Limitation Act, particularly Section 29(2) of the Act to contend that the provisions of Limitation Act are applicable to the facts of the present case. He also

submitted that the period of 30 years was only prescription and was not the period of limitation prescribed for taking action as it is taken in the present case.

9. It is well settled that for rejecting the plaint under Order 7, Rule 11 what is required to be seen is the averments made in the plaint and not beyond that and if it is found from the averments made in the plaint that the suit is barred by law of limitation or for that mater as prescribed in Rule 11(d) of C.P.C., then alone the plaint can be rejected. If there is any slightest doubt and the point is arguable, the plaint cannot be rejected under Order 7 Rule 11 (d) of C.P.C.

10. In the present case, it is clearly mentioned in para 52 of the plaint that the cause of action which arose on 9.9.74 was continuous and recurring cause of action and the limitation as per the special law i.e. Canon Law is 30 years. Therefore, the suit was within limitation. By this averment it is clear that the limitation which is claimed by the plaintiff for filing the suit for declaration and injunction was 30 years as per the said law i.e. Canon Law and not as per the provisions of the Limitation Act. This being so, the issue would have been whether the provision of special law i.e. Canon Law is applicable or whether the provision of the Limitation Act is applicable. This issue was expected to be decided not at the stage of rejection of the plaint under Order VII, Rule 11 C.P.C., but at the time of final hearing.

11. The Counsel on both sides are not disputing the position that the parties are governed by the Canon Law; that the cause of action for the suit had also arisen as per provisions of the Canon Law. If this is the position, there should be no difficulty in holding that the provisions of Canon Law would govern the parties as also the present suit. Therefore, the provision of Canon 1270 would, prima facie, apply, which reads as under :

> "Can. 1270 Immovable goods, precious movable goods, rights and legal claims, whether personal or real, which belong to the Apostolic See, are prescribed after a period of one hundred years. For those goods which belong to another public, ecclesiastical juridical person, the period for prescription is thirty years."

12. The allegations made in the plaint indicate that the Socorro Confraria are appointed not by the Bishop, but by the Administrator. What is contended in the plaint is that the authority, namely Socorro Confraria is with the Bishop and not with the Administrator and it is on that count that the appointment of the defendant as Socorro Confraria is challenged and, therefore, the declaration sought. Canon 1270, as above, provides for the period of prescription as 30 years for perfecting the title to the Confraria. It is undisputed that the Confrarias were appointed on 9.9.74 and the suit was field on 2.9.2004. That is well before the expiry of period of 30 years within which time the title would have been perfected. Since the parties are governed by the Canon Law, needless to say that the provision of Canon Law would apply and, therefore, prima facie, the period of limitation would be 30 years as per Canon

1270. When the contention was raised that the limitation Act would apply, clearly sets out that the dispute will have to be decided at final trial and not at the stage of application under Order VII, Rule 11 of C.P.C. This, therefore, makes it clear on reading of the averments made in the plaint alone that the suit could not have been held to be barred by limitation. This itself would have been sufficient for the learned trial Judge to reject the ground of limitation raised in the application made under Order 7, Rule 11(d) of C.P.C.

13. The Counsel on both sides had argued at length whether the provision of Canon Law or whether the provision of Limitation Act would apply. I need not go into the said argument, as the arguments at length on these points itself indicate that there is an issue which needs to be decided by the Court at the final hearing and it will not provide the ground for rejection of the plaint under Order 7, Rule 11 C.P.C.

14. As to the other ground for rejection i.e. about the jurisdiction of the Civil Court, the provision of Section 9 of C.P.C. makes it clear that the Courts are required to try all civil suits unless barred. The relevant provision of section 9 reads as under :

> " 9**. Courts to try all civil suits unless barred.** - The Courts (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.
>
> *Explanation I.* - A suit in which the right to

> property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rights or ceremonies.
>
> *Explanation II.* - For the purpose of this section, it is immaterial whether or not any fees are attached to the office referred to in *Explanation I* or whether or not such office is attached to a particular place."

This provision indicates that the suits of civil nature are triable by the Civil Court unless the suits are specifically barred by the provisions of law or impliedly barred. Counsel on both sides unanimously submit that there is no provision in the Canon Law which bars the suit being filed in the Civil Court. Surprisingly, the trial Court has made observation that "Even otherwise, the jurisdiction of the Civil Court is barred under the Canon law." The learned trial Judge also wrongly mentioned that the Canon law is not a special or local law and it is a divine law and, therefore, the civil Court had no jurisdiction. The Canon law is a Code in itself and it governs the Roman Catholics. The parties to the suit are Roman Catholics. There is no dispute that they are governed by Canon Law. Under these circumstances, it was futile to consider whether the Canon law has force of law or whether it is a statute or otherwise. Under the circumstances, the trial Court has committed a grave error in rejecting the plaint under Order 7, Rule 11(d) of C.P.C. Therefore, the impugned order cannot be sustained. It has, therefore, to be set aside.

15. The appeal is, therefore, allowed. The impugned order is set

aside and the application made under Order 7, Rule 11(d) C.P.C. is rejected. The trial Court shall decide the suit as expeditiously as possible.

S.K. SHAH, J.

ssm.